

ESTTA Tracking number: **ESTTA495040**

Filing date: **09/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mary K McCauley		
Entity	Individual	Citizenship	UNITED STATES
Address	74219 258th Street Dassel, MN 55325 UNITED STATES		

Attorney information	Ruth Rivard Leonard, Street and Deinard 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402 UNITED STATES ruth.rivard@leonard.com Phone:612.335.1799
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Registration Subject to Cancellation

Registration No	4047901	Registration date	11/01/2011
Registrant	JillyBeans Shoes Corp 104 Samantha Circle Westhampton, NY 11977 UNITED STATES		

Goods/Services Subject to Cancellation


Class 025. First Use: 2010/08/10 First Use In Commerce: 2010/08/10

All goods and services in the class are cancelled, namely: Athletic footwear; Athletic shoes; Beach footwear; Beach shoes; Canvas shoes; Fitted shoe or boot covering to protect the shoes or boot from water or other damage; Flip flops; Footwear; Footwear; Footwear for men; Footwear for men and women; Footwear for women; Footwear made of wood; Footwear not for sports; Footwear, namely, pumps; Footwear, namely, rubbers; Footwear, namely, work boots; Infants' shoes and boots; Insoles; Insoles for footwear; Leather shoes; Leisure shoes; Polymer custom cushioned shoe inserts for primarily non-orthopedic purposes; Pumps; Rubber shoes; Running shoes; Sandals and beach shoes; Shoe covers for use when wearing shoes; Shoe inserts for primarily non-orthopedic purposes; Shoe pegs; Shoe soles; Shoe straps; Shoes; Soles for footwear; Thongs; Tongue or pullstrap for shoes and boots; Viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; Water repelling footwear; Water repelling leather shoes and boots; Waterproof footwear; Waterproof leather shoes; Waterproof leather shoes and boots; Women's shoes; Wooden shoes; Work shoes and boots

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85596694	Application Date	04/12/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JILLY BEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2009/05/01 First Use In Commerce: 2009/05/01 Clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children		

Attachments	85596694#TMSN.jpeg (1 page)(bytes) JILLYBEANS Cancellation.pdf (7 pages)(82237 bytes) JILLYBEANS Exhibits A-C.pdf (40 pages)(3795116 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ruth Rivard/
Name	Ruth Rivard
Date	09/18/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No.: 4,047,901

Mark: **JILLYBEANS (design)**

Date of Issue: November 1, 2011

Mary McCauley, individual,)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	
)	
JillyBeans Shoes Corp.,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner Mary McCauley ("Petitioner") believes that as between Ms. McCauley and Registrant JillyBeans Shoes Corp. ("Registrant"), Ms. McCauley, has priority in the mark JILLY BEAN. Furthermore, Ms. McCauley believes that Registrant's mark, Registration No. 4,047,901 for JILLYBEANS, is not in use in commerce in the United States by the Registrant, JillyBeans Shoes Corp., in connection with the goods listed on the Certificate of Registration, namely, athletic footwear; athletic shoes; beach footwear; beach shoes; canvas shoes; fitted shoe or boot covering to protect the shoes or boot from water or other damage; flip flops; footwear; footwear; footwear for men; footwear for men and women; footwear for women; footwear made of wood; footwear not for sports; footwear, namely, pumps; footwear, namely, rubbers; footwear, namely, work boots; infants' shoes and boots; insoles; insoles for footwear; leather shoes; leisure shoes; polymer custom

cushioned shoe inserts for primarily non-orthopedic purposes; pumps; rubber shoes; running shoes; sandals and beach shoes; shoe covers for use when wearing shoes; shoe inserts for primarily non-orthopedic purposes; shoe pegs; shoe soles; shoe straps; shoes; soles for footwear; thongs; tongue or pullstrap for shoes and boots; viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; water repelling footwear; water repelling leather shoes and boots; waterproof footwear; waterproof leather shoes; waterproof leather shoes and boots; women's shoes; wooden shoes; work shoes and boots; and that the mark had been abandoned by Registrant.

Ms. McCauley's application to register the mark JILLY BEAN in international class 25 in connection with clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children, has been refused by the United States Patent and Trademark Office ("USPTO") based on Registrant's mark. Thus, Ms. McCauley has been and will continue to be injured by the existence of this registration as it prevents Ms. McCauley from obtaining a federal trademark registration for the mark JILLY BEAN.

As grounds for her petition, Mary McCauley alleges:

1. Petitioner Mary Kay McCauley is the owner of Jilly Bean, a retro-inspired children's clothing store located at 74219 258th Street, Dassel, Minnesota 55325. Jilly Bean takes pride in designing and manufacturing quality, one-of-a-kind, made-in-America wearable fashion and art for children.

2. Ms. McCauley has been using JILLY BEAN to identify and distinguish her quality goods since at least as early as May 1, 2009.

3. On information and belief, JillyBeans Shoes Corp. is a New York corporation, located at 104 Samantha Circle, Westhampton, NY 11977.

4. JillyBeans Shoes Corp. is the listed owner of Registration No. 4,047,901, registered for use in connection with athletic footwear; athletic shoes; beach footwear; beach shoes; canvas shoes; fitted shoe or boot covering to protect the shoes or boot from water or other damage; flip flops; footwear; footwear; footwear for men; footwear for men and women; footwear for women; footwear made of wood; footwear not for sports; footwear, namely, pumps; footwear, namely, rubbers; footwear, namely, work boots; infants' shoes and boots; insoles; insoles for footwear; leather shoes; leisure shoes; polymer custom cushioned shoe inserts for primarily non-orthopedic purposes; pumps; rubber shoes; running shoes; sandals and beach shoes; shoe covers for use when wearing shoes; shoe inserts for primarily non-orthopedic purposes; shoe pegs; shoe soles; shoe straps; shoes; soles for footwear; thongs; tongue or pullstrap for shoes and boots; viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; water repelling footwear; water repelling leather shoes and boots; waterproof footwear; waterproof leather shoes; waterproof leather shoes and boots; women's shoes; wooden shoes; work shoes and boots. *See Exhibit A.*

5. On April 12, 2012, Ms. McCauley submitted an application to register the mark JILLY BEAN for use in connection with clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children, international class 25. Ms. McCauley's application is Serial No. 85596694. *See Exhibit B.*

6. On July 31, 2012, Ms. McCauley received an office action from the USPTO in which the USPTO refused to register the applied for mark based on a likelihood of confusion with U.S. Registration No. 4,047,901. *See* Exhibit C.

COUNT I
(Cancellation of Registration No. 4,047,901 Based on Priority)

7. Petition realleges paragraphs 1 through 6.

8. On September 14, 2010, Registrant submitted a use application to register the stylized mark JILLYBEANS for use in connection with various kinds of shoes.

9. Registrant claims in its trademark application to have first used the mark JILLYBEANS on August 10, 2010. This date of first use was reasserted in a May 23, 2011 response to an office action.

10. Ms. McCauley began using the mark JILLY BEAN in connection with children's clothing at least as early as May 1, 2009, over a year before Registrant's claimed date of first use.

11. Upon information and belief, Ms. McCauley, has priority in the mark JILLY BEAN.

12. In the July 31 Office Action, the Examining Attorney concluded that there is a likelihood of confusion between Ms. McCauley's mark and the JILLYBEANS registration.

13. Ms. McCauley has been prevented from registering the JILLY BEAN mark based on the continued presence of Registrant's registration. Thus, if the registration is not

cancelled, Ms. McCauley will continue to be damaged as a result of the continued registration of Registrant's mark.

COUNT II
(Cancellation of Registration No. 4,047,901 Based on Non-Use)

14. Petitioner realleges paragraphs 1 through 6.

15. On May 23, 2011, in response to an office action, Registrant amended the description of goods for which the applied for mark was used in connection with. The amended list of goods was accepted by the Examining Attorney and is set forth as the list of goods identified in the registration for JILLYBEANS. The list of goods includes athletic footwear; athletic shoes; beach footwear; beach shoes; canvas shoes; fitted shoe or boot covering to protect the shoes or boot from water or other damage; flip flops; footwear; footwear; footwear for men; footwear for men and women; footwear for women; footwear made of wood; footwear not for sports; footwear, namely, pumps; footwear, namely, rubbers; footwear, namely, work boots; infants' shoes and boots; insoles; insoles for footwear; leather shoes; leisure shoes; polymer custom cushioned shoe inserts for primarily non-orthopedic purposes; pumps; rubber shoes; running shoes; sandals and beach shoes; shoe covers for use when wearing shoes; shoe inserts for primarily non-orthopedic purposes; shoe pegs; shoe soles; shoe straps; shoes; soles for footwear; thongs; tongue or pullstrap for shoes and boots; viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; water repelling footwear; water repelling leather shoes and boots;

waterproof footwear; waterproof leather shoes; waterproof leather shoes and boots; women's shoes; wooden shoes; work shoes and boots.

16. Upon information and belief, Registrant is not using the registered mark for the goods listed in the registration.

17. Upon information and belief, Registrant has abandoned the mark JILLYBEANS for the goods as set forth in Registration No. 4,047,901.

18. Ms. McCauley has been prevented from registering the JILLY BEAN trademark based on the continued presence of Registrant's registration. Thus, Ms. McCauley has been and will continue to be damaged as a result of the continued registration of Registrant's mark.

WHEREFORE, Ms. McCauley requests that Registration No. 4,047,901 for the mark JILLYBEANS be cancelled.

Respectfully submitted:

Dated: September 18, 2012

By: /Ruth Rivard/

Ruth Rivard
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Telephone: (612) 335-1799
Facsimile: (612) 335-1657

ATTORNEY FOR PETITIONER MARY KAY MCCAULEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 18, 2012, true and correct copies of the foregoing PETITION OF CANCELLATION and exhibits were served on Registrant by depositing copies of same in the United States mail, first class postage pre-paid, addressed to:

JillyBeans Shoes Corp.
104 Samantha Circle
West Hampton, NY 11977

Stan Cohen
Stanley Dale Cohen
41 Park Avenue, 4F
New York NY 10016

/Ruth Rivard/

Ruth Rivard

MARY MCCAULEY V. JILLYBEANS SHOES CORP.

PETITION FOR CANCELLATION

EXHIBITS A-C

EXHIBIT A

United States of America
United States Patent and Trademark Office

JillyBeans

Reg. No. 4,047,901

Registered Nov. 1, 2011

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

JILLYBEANS SHOES CORP (NEW YORK CORPORATION)
104 SAMANTHA CIRCLE
WESTHAMPTON, NY 11977

FOR: ATHLETIC FOOTWEAR; ATHLETIC SHOES; BEACH FOOTWEAR; BEACH SHOES; CANVAS SHOES; FITTED SHOE OR BOOT COVERING TO PROTECT THE SHOES OR BOOT FROM WATER OR OTHER DAMAGE; FLIP FLOPS; FOOTWEAR; FOOTWEAR; FOOTWEAR FOR MEN; FOOTWEAR FOR MEN AND WOMEN; FOOTWEAR FOR WOMEN; FOOTWEAR MADE OF WOOD; FOOTWEAR NOT FOR SPORTS; FOOTWEAR, NAMELY, PUMPS; FOOTWEAR, NAMELY, RUBBERS; FOOTWEAR, NAMELY, WORK BOOTS; INFANTS' SHOES AND BOOTS; INSOLES; INSOLES FOR FOOTWEAR; LEATHER SHOES; LEISURE SHOES; POLYMER CUSTOM CUSHIONED SHOE INSERTS FOR PRIMARILY NON-ORTHOPEDIC PURPOSES; PUMPS; RUBBER SHOES; RUNNING SHOES; SANDALS AND BEACH SHOES; SHOE COVERS FOR USE WHEN WEARING SHOES; SHOE INSERTS FOR PRIMARILY NON-ORTHOPEDIC PURPOSES; SHOE PEGS; SHOE SOLES; SHOE STRAPS; SHOES; SOLES FOR FOOTWEAR; THONGS; TONGUE OR PULLSTRAP FOR SHOES AND BOOTS; VISCOUS GEL POLYMER SOLD AS A COMPONENT OF FINISHED CUSTOM CUSHIONED FOOTWEAR FOR NON-ORTHOPEDIC PURPOSES AND APPAREL; WATER REPELLING FOOTWEAR; WATER REPELLING LEATHER SHOES AND BOOTS; WATERPROOF FOOTWEAR; WATERPROOF LEATHER SHOES; WATERPROOF LEATHER SHOES AND BOOTS; WOMEN'S SHOES; WOODEN SHOES; WORK SHOES AND BOOTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-10-2010; IN COMMERCE 8-10-2010.



THE MARK CONSISTS OF THE TERM "JILLY BEANS" IN BLACK. A RED JELLYBEAN FORMS A PART OF THE LETTER "J", AN ORANGE JELLYBEAN FORMS PART OF THE LETTER "I", A GREEN JELLYBEAN FORMS PART OF THE LETTER "Y", A BLUE JELLYBEAN FORMS PART OF THE LETTER "B", A PURPLE JELLYBEAN FORMS PART OF THE LETTER "A", AND A RED JELLYBEAN FORMS A PART OF THE LETTER "S".

THE COLOR(S) BLACK, RED, ORANGE, GREEN, BLUE AND PURPLE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

David J. Kyfos

Director of the United States Patent and Trademark Office

SER. NO. 85-129,572, FILED 9-14-2010.

HEATHER THOMPSON, EXAMINING ATTORNEY

EXHIBIT B

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 11/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 85596694

Filing Date: 04/12/2012

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85596694
MARK INFORMATION	
*MARK	JILLY BEAN
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	JILLY BEAN
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Mary Kay McCauley
DBA/AKA/TA/Formerly	DBA Jilly Bean
*STREET	74219 258th Street
*CITY	Dassel
*STATE (Required for U.S. applicants)	Minnesota
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	55325
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025

EXHIBIT B

*IDENTIFICATION	Clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/01/2009
FIRST USE IN COMMERCE DATE	At least as early as 05/01/2009
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT11\855\966\85596694\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	photograph of a hang tag on item of clothing showing use of applicant's mark in class 25 goods
ATTORNEY INFORMATION	
NAME	Ruth Rivard
ATTORNEY DOCKET NUMBER	70128.1
FIRM NAME	Leonard, Street and Deinard
STREET	150 South Fifth Street, Suite 2300
CITY	Minneapolis
STATE	Minnesota
COUNTRY	United States
ZIP/POSTAL CODE	55402
PHONE	612.335.1799
FAX	612.335.1657
EMAIL ADDRESS	ruth.rivard@leonard.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Eric D. Paulsrud
CORRESPONDENCE INFORMATION	
NAME	Ruth Rivard
FIRM NAME	Leonard, Street and Deinard
STREET	150 South Fifth Street, Suite 2300
CITY	Minneapolis
STATE	Minnesota
COUNTRY	United States
ZIP/POSTAL CODE	55402

EXHIBIT B

PHONE	612.335.1799
FAX	612.335.1657
EMAIL ADDRESS	ruth.rivard@leonard.com;suzanne.mullen@leonard.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Ruth Rivard/
SIGNATORY'S NAME	Ruth Rivard
SIGNATORY'S POSITION	Attorney of record, Minnesota bar member
DATE SIGNED	04/12/2012

EXHIBIT B

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 11/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 85596694

Filing Date: 04/12/2012

To the Commissioner for Trademarks:

MARK: JILLY BEAN (Standard Characters, see [mark](#))

The literal element of the mark consists of JILLY BEAN.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Mary Kay McCauley, DBA Jilly Bean, a citizen of United States, having an address of
74219 258th Street
Dassel, Minnesota 55325
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children.

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee at least as early as 05/01/2009, and first used in commerce at least as early as 05/01/2009, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) photograph of a hang tag on item of clothing showing use of applicant's mark in class 25 goods.

[Specimen File 1](#)

The applicant's current Attorney Information:

Ruth Rivard and Eric D. Paulsrud of Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
United States

The attorney docket/reference number is 70128.1.

The applicant's current Correspondence Information:

Ruth Rivard
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
612.335.1799(phone)

EXHIBIT B

612.335.1657(fax)

ruth.rivard@leonard.com;suzanne.mullen@leonard.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Ruth Rivard/ Date Signed: 04/12/2012

Signatory's Name: Ruth Rivard

Signatory's Position: Attorney of record, Minnesota bar member

RAM Sale Number: 6078

RAM Accounting Date: 04/13/2012

Serial Number: 85596694

Internet Transmission Date: Thu Apr 12 19:48:31 EDT 2012

TEAS Stamp: USPTO/BAS-204.154.89.30-2012041219483166

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dac85342d-CC-6078-20120412192524439548

JILLY BEAN

EXHIBIT B



EXHIBIT C

To: Mary Kay McCauley (ruth.rivard@leonard.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85596694 - JILLY BEAN - 70128.1

Sent: 7/31/2012 4:46:47 PM

Sent As: ECOM112@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
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[Attachment - 6](#)
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85596694

MARK: JILLY BEAN

85596694

EXHIBIT C

CORRESPONDENT ADDRESS:

RUTH RIVARD
LEONARD, STREET AND DEINARD
150 S 5TH ST STE 2300
MINNEAPOLIS, MN 55402-4238

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Mary Kay McCauley

CORRESPONDENT'S REFERENCE/DOCKET

NO:

70128.1

CORRESPONDENT E-MAIL ADDRESS:

ruth.rivard@leonard.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 7/31/2012

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) – LIKELIHOOD OF CONFUSION REFUSAL

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4047901. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See the enclosed registration – Attachment 1.*

The applicant's mark is “ **JILLY BEAN**” in standard character for “clothing, namely, dresses, tops, skirts, pants, robes, sleepwear, and outerwear, all for children.”

The registrant's mark is “ **JILLYBEANS**” in stylized form for “athletic footwear; athletic shoes; beach footwear; beach shoes; canvas shoes; fitted shoe or boot covering to protect the shoes or boot from water or other damage; flip flops; footwear; footwear for men; footwear for men and women; footwear for women; footwear made of wood; footwear not for sports; footwear, namely, pumps; footwear, namely, rubbers; footwear, namely, work boots; infants' shoes and boots; insoles; insoles for footwear; leather shoes; leisure shoes; polymer custom cushioned shoe inserts for primarily non-orthopedic purposes; pumps; rubber shoes; running shoes; sandals and beach shoes; shoe covers for use when wearing shoes; shoe inserts for primarily non-orthopedic purposes; shoe pegs; shoe soles; shoe straps; shoes; soles for footwear; thongs; tongue or pullstrap for shoes and boots; viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; water repelling footwear; water repelling leather shoes and boots; waterproof footwear; waterproof leather shoes; waterproof leather

EXHIBIT C

shoes and boots; women's shoes; wooden shoes; work shoes and boots.”

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

In this case, applicant's mark, **JILLY BEAN**, is confusingly similar to the registered mark, **JILLYBEANS** in stylized form. The marks are nearly identical in sound, appearance, meaning and overall commercial impression. Here, the only difference in the sound, or pronunciation of the mark, is the pluralization of the registered mark. However, this Office has held that trademarks consisting of the singular and plural forms of the same term are essentially the same mark. *See Wilson v. Delaunay*, 245 F.2d 877, 878, 114 USPQ 339, 341 (C.C.P.A. 1957) (finding no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark); *In re Pix of Am., Inc.*, 225 USPQ 691, 692 (TTAB 1985) (noting that the pluralization of NEWPORT is “almost totally insignificant” in terms of likelihood of confusion among purchasers); *In re Sarjanian*, 136 USPQ 307, 308 (TTAB 1962) (finding no material difference between the singular and plural forms of RED DEVIL).

Although, the registered mark contains some stylization, this will not overcome a likelihood of confusion determination; particularly because a mark in standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterro Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters generally will not avoid likelihood of confusion with a mark in standard characters because the marks could be presented in the same manner of display. *See, e.g., In re Viterro Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”).

In the present case, applicant's mark does not create a distinct commercial impression because it contains the identical wording as the registrant's mark, and purchasers encountering the marks are likely to be confused as to the source of the goods by the use of similar marks. Accordingly, a likelihood of confusion exists under Section 2(d) of the Trademark Act.

Relatedness of the Goods

Second, the goods are compared to determine whether they are similar or related or whether the activities

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surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

If the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied* 506 U.S. 1034 (1992); *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *Amcors, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a).

In this instance, applicant's goods are highly related to the goods provided by the registrant and are likely to be encountered in the same channels of trade by the same class of purchasers. Neither the application nor the registration contains any limitations regarding trade channels for the goods and therefore it is assumed that registrant's and applicant's goods are sold everywhere that is normal for such items, i.e., clothing and department stores. Thus, it can also be assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks. *See Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); TMEP §1207.01(a)(iii).

To demonstrate the highly related nature of the goods and the likelihood of consumers encountering these goods in the same trade channels, the trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. *See the attached third party registrations – Attachment 2*. This evidence shows that the goods listed therein, are of a kind that may emanate from a single source under a single mark. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If applicant chooses to respond to the refusal to register, then applicant must also respond to the following requirements.

AMENDMENT TO THE IDENTIFICATION OF GOODS REQUIRED

The identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant must specify the common commercial or generic name for the goods. If there is no common commercial or

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generic name, applicant must describe the product and intended consumer as well as its main purpose and intended uses.

Recommended changes have been highlighted in **bold** and suggestions for amending applicant's identification of goods are in brackets.

PLEASE NOTE: If applicant adopts the recommended identification of goods, applicant must remove any brackets from the identification of goods and incorporate the bracketed information into the amended description. The identification of goods and/or services contains parentheses. Generally, parentheses and brackets should *not* be used in identifications. Parenthetical information is permitted in identifications only if it serves to explain or translate the matter immediately preceding the parenthetical phrase in such a way that it does not affect the clarity of the identification, e.g., "obi (Japanese sash)." TMEP §1402.12.

Applicant may adopt the following identification of goods, if accurate:

International Class 025: Clothing, namely, dresses, tops, skirts, pants, **robes**, sleepwear, and outerwear, **namely**, _____ **[applicant to specify the generic or common commercial name for the outerwear, e.g., jackets, coats, rain boots, etc.]** all for children.

TMEP §1402.01.

An applicant may amend an identification of goods only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

For assistance with identifying and classifying goods and/or services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

RESPONSE GUIDELINES

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and email technical questions to TEAS@uspto.gov.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Charisma Hampton/
Trademark Examining Attorney
U.S. Patent & Trademark Office
Charisma.Hampton@uspto.gov
571-270-1522

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Law Office 112

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

ATTACHMENT #1

EXHIBIT C

Print: Jul 31, 2012

85129572

DESIGN MARK

Serial Number

85129572

Status

REGISTERED

Word Mark

JILLYBEANS

Standard Character Mark

No

Registration Number

4047901

Date Registered

2011/11/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

JillyBeans Shoes Corp CORPORATION NEW YORK 104 Samantha Circle
Westhampton NEW YORK 11977

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Athletic footwear; Athletic shoes; Beach footwear; Beach shoes; Canvas shoes; Fitted shoe or boot covering to protect the shoes or boot from water or other damage; Flip flops; Footwear; Footwear; Footwear for men; Footwear for men and women; Footwear for women; Footwear made of wood; Footwear not for sports; Footwear, namely, pumps; Footwear, namely, rubbers; Footwear, namely, work boots; Infants' shoes and boots; Insoles; Insoles for footwear; Leather shoes; Leisure shoes; Polymer custom cushioned shoe inserts for primarily non-orthopedic purposes; Pumps; Rubber shoes; Running shoes; Sandals and beach shoes; Shoe covers for use when wearing shoes; Shoe inserts for primarily non-orthopedic purposes; Shoe pegs; Shoe soles; Shoe straps; Shoes; Soles for footwear; Thongs; Tongue or pullstrap for shoes and boots; Viscous gel polymer sold as a component of finished custom cushioned footwear for non-orthopedic purposes and apparel; Water repelling footwear; Water repelling leather shoes and boots; Waterproof footwear; Waterproof leather shoes; Waterproof leather shoes and

EXHIBIT C

Print: Jul 31, 2012

85129572

boots; Women's shoes; Wooden shoes; Work shoes and boots. First Use: 2010/08/10. First Use In Commerce: 2010/08/10.

Description of Mark

The mark consists of the term "JILLY BEANS" in black. A red jellybean forms a part of the letter "J", an orange jellybean forms part of the letter "I", a green jellybean forms part of the letter "Y", a blue jellybean forms part of the letter "B", a purple jellybean forms part of the letter "A", and a red jellybean forms a part of the letter "S".

Colors Claimed

The color(s) black, red, orange, green, blue and purple is/are claimed as a feature of the mark.

Filing Date

2010/09/14

Examining Attorney

THOMPSON, HEATHER

Attorney of Record

Stan Cohen

Jilly Beans

ATTACHMENT #2

EXHIBIT C

Print: Jul 31, 2012

85186502

DESIGN MARK

Serial Number

85186502

Status

REGISTERED

Word Mark

SVOOSS

Standard Character Mark

Yes

Registration Number

4180174

Date Registered

2012/07/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

SVOOSS LIMITED LIABILITY COMPANY FLORIDA 1261 S. Haberland Blvd. North
Port FLORIDA 34288

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: CLOTHING FOR
MEN, WOMEN AND CHILDREN, NAMELY, COATS, RAINCOATS, ANORAKS, PARKAS,
BLAZERS, JACKETS, CARDIGANS, BOLEROS, SPORT COATS, WIND RESISTANT
JACKETS, SUITS, TUXEDOS, VESTS, DRESSES, EVENING GOWNS, JUMPERS,
SKIRTS, PANTS, SLACKS, TROUSERS, JEANS, DUNGAREES, JUMPSUITS,
OVERALLS, COVERALLS, FLIGHT SUITS, GYM SUITS, JOGGING SUITS, SWEAT
PANTS, THERMAL UNDERWEAR, SHORTS, SKORTS, ROMPERS, CULOTTES,
SHORTALLS, SHIRTS, SWEATERS, JERSEYS, BLOUSES, TUNICS, SWEATSHIRTS,
T-SHIRTS, HALTER TOPS, TANK TOPS, BODYSUITS, UNITARDS, CAMISOLES,
CHEMISES, UNDERSHIRTS, SLIPS, FOUNDATION GARMENTS, BODYSHAPERS,
BRASSIERES, BUSTIERS, GARTER BELTS, BRIEFS, BOXER SHORTS, BLOOMERS,
UNDERPANTS, PANTIES, LINGERIE, LOUNGEWEAR, NIGHTGOWNS, NIGHT SHIRTS,
NEGLIGEES, ROBES, PAJAMAS, HOSIERY, PANTYHOSE, TIGHTS, KNEE HIGHS, LEG
WARMERS, LEGGINGS, SOCKS, HEAD WEAR, HATS, CAPS, HOODS, HEAD BANDS,
NECKTIES, BOW TIES, ASCOTS, POCKET SQUARES, SCARVES, SHAWLS,
NECKERCHIEFS, GLOVES, MITTENS, BELTS, SASHES, CUMMERBUNDS, SHOES,
FOOTWEAR, BOOTS, ATHLETIC SHOES, ATHLETIC FOOTWEAR, GALOSHES,

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Print: Jul 31, 2012

85186502

SWIMWEAR, BATHING SUITS, BATHING TRUNKS, BEACHWEAR, BEACH COVERUPS, SARONGS, SKI WEAR, SKI SUITS, SKI PANTS, SKI GLOVES, THERMAL SOCKS, INFANT WEAR, CLOTH BIBS, BOOTIES, BABY BUNTING, AND PLAYSUITS. First Use: 2011/01/26. First Use In Commerce: 2011/03/01.

Filing Date

2010/11/29

Examining Attorney

RINKER, ANTHONY

SVOOSS

EXHIBIT C

Print: Jul 31, 2012

85381641

DESIGN MARK

Serial Number

85381641

Status

REGISTERED

Word Mark

BUDDY BUDDY

Standard Character Mark

Yes

Registration Number

4180749

Date Registered

2012/07/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Canter, Gary INDIVIDUAL UNITED STATES Los Angeles CA 90036 PO Box 361568 Los Angeles CALIFORNIA 90036

Owner

Canter, Traci INDIVIDUAL UNITED STATES 446 S. Highland Los Angeles CALIFORNIA 90036

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Picture books. First Use: 2012/01/01. First Use In Commerce: 2012/01/01.

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Boxer shorts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Dresses; Jackets; Jerseys; Lingerie; Pants; Robes; Shoes; Socks; Sweatpants; Sweatshirts; T-shirts; Ties. First Use: 2012/01/01. First Use In Commerce: 2012/01/01.

Filing Date

EXHIBIT C

Print: Jul 31, 2012

85381641

2011/07/26

Examining Attorney
WOOD, CAROLINE

Buddy Buddy

EXHIBIT C

Print: Jul 31, 2012

85428822

DESIGN MARK

Serial Number

85428822

Status

REGISTERED

Word Mark

THE DRIVE INSIDE

Standard Character Mark

No

Registration Number

4153370

Date Registered

2012/06/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Strickling, Jonathan S. DBA The Drive Inside CORPORATION OHIO 18938
Scottsdale Blvd Shaker Hts. OHIO 44122

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: A-shirts; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Apres-ski shoes; Aqua shoes; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shoes; Ballet shoes; Ballroom dancing shoes; Baseball caps and hats; Baseball shoes; Beach shoes; Bicycle gloves; Bicycling gloves; Boat shoes; Body shirts; Bowling shoes; Boxing shoes; Button down shirts; Camouflage gloves; Camouflage pants; Camouflage shirts; Camp shirts; Canvas shoes; Capri pants; Cargo pants; Cleats for attachment to sports shoes; Climbing shoes; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Collared shirts; Compression garments for athletic or other non-medical use, namely, compression socks, leggings, vests, jerseys, trousers, shirts; Cross-country gloves; Cycling shoes; Dance shoes; Deck-shoes; Denims; Dress pants; Dress

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85428822

shirts; Drivers; Ear bands; Ear muffs; Ear warmers; Fingerless gloves; Fishing shirts; Fitted shoe or boot covering to protect the shoes or boot from water or other damage; Football shoes; Fur hats; Fur muffs; Gloves; Gloves as clothing; Gloves for apparel; Gloves for personal hand conditioning use; Gloves including those made of skin, hide or fur; Golf pants, shirts and skirts; Golf shirts; Golf shoes; Gym pants; Gymnastic shoes; Handball shoes; Hat bands; Hats; Hats for infants, babies, toddlers and children; Headbands; Headbands against sweating; Headbands for clothing; Headgear, namely, hats, caps; Heel pieces for shoes; Hockey shoes; Hooded sweat shirts; Hunting pants; Hunting shirts; Infants' shoes and boots; Insoles; Jeggings, namely, pants that are partially jeans and partially leggings; Jogging pants; Knit shirts; Knitted gloves; Leather hats; Leather shoes; Leg shielding device, attachable to and detachable from a person's pants, comprised of padding to shield the legs from flying debris when mowing with a string trimmer; Leisure shoes; Long-sleeved shirts; Lounge pants; Maternity clothing, namely, shirts, pants, shorts, shoes; Moisture-wicking sports pants; Moisture-wicking sports shirts; Motorcycle gloves; Mountaineering shoes; Muffs; Night shirts; Nurse pants; Open-necked shirts; Outdoor gloves; Over shirts; Pants; Party hats; Perspiration absorbent strap to be used in the bill of a hat; Pique shirts; Polo shirts; Rain hats; Riding gloves; Riding shoes; Rubber shoes; Rugby shirts; Rugby shoes; Running pads that strap onto shoes; Running shoes; Sandals and beach shoes; Scientific and technological apparel, namely, shirts, pants, jackets, footwear, hats and caps, uniforms; Shirts; Shirts and short-sleeved shirts; Shirts and slippers; Shirts for infants, babies, toddlers and children; Shirts for suits; Shoe covers for use when wearing shoes; Shoe inserts for primarily non-orthopedic purposes; Shoe soles; Shoe straps; Shoes; Shoes featuring spring devices, cushioning technology; Shoes soles for repair; Shoes with hook and pile fastening tapes; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Ski and snowboard shoes and parts thereof; Ski gloves; Ski pants; Skiing shoes; Sleep pants; Sleep shirts; Snap crotch shirts for infants and toddlers; Snow pants; Snowboard gloves; Snowboard pants; Soccer shoes; Sport shirts; Sports caps and hats; Sports pants; Sports shirts; Sports shirts with short sleeves; Stretch pants; Sweat pants; Sweat shirts; T-shirts; T-shirts for babies, adults, children, women, men; Tap pants; Tap shoes; Tee shirts; Tennis shoes; Toboggan hats, pants and caps; Track and field shoes; Track pants; Training shoes; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Turtle neck shirts; Volleyball shoes; Water repelling leather shoes and boots; Waterproof jackets and pants; Waterproof leather shoes; Waterproof leather shoes and boots; Wearable garments and clothing, namely, shirts; Welts for boots and shoes; Wet suit gloves; Wind pants; Wind shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Women's hats and hoods; Women's shoes; Women's shoes, namely, foldable flats; Woolly hats; Work shoes and boots; Wristbands; Wristbands containing a cooling substance to cool the wearer; Yoga

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85428822

pants; Yoga shirts. First Use: 2006/01/01. First Use In Commerce: 2008/04/18.

Prior Registration(s)

3869684

Description of Mark

The mark consists of stylized lettering in all caps with the word "THE" appearing in the color white, followed the word "DRIVE" appearing in the color red, followed by the word "INSIDE" appearing in the color white. The stylized wording "THE DRIVE INSIDE", forms a shaft of an arrow. The head of the arrow is formed by a stylized capital letter "D" appearing to the right of the wording and appearing in the color red outlined with a white border. Within the stylized letter "D" there appears a stylized arrow head design. The color black represents transparent areas and is not part of the mark.

Colors Claimed

The color(s) white, and red is/are claimed as a feature of the mark.

Filing Date

2011/09/21

Examining Attorney

FOSDICK, GEOFFREY



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Print: Jul 31, 2012

85464160

DESIGN MARK

Serial Number

85464160

Status

REGISTERED

Word Mark

GLINDA THE GOOD WITCH

Standard Character Mark

Yes

Registration Number

4157881

Date Registered

2012/06/12

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Turner Entertainment Co. CORPORATION DELAWARE Bldg 156 4000 Warner Blvd. Burbank CALIFORNIA 91522

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing for men, women and children, namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, skirts, blouses, dresses, suspenders, sweaters, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sun visors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, socks, booties, slipper socks, swimwear and masquerade and Halloween costumes and masks sold in connection therewith. First Use: 2012/01/15. First Use In Commerce: 2012/01/15.

Prior Registration(s)

2173291;2462292

Filing Date

2011/11/03

Examining Attorney

EXHIBIT C

Print: Jul 31, 2012

85464160

FINK, GINA

Attorney of Record

Avis Frazier-Thomas

GLINDA THE GOOD WITCH

EXHIBIT C

Print: Jul 31, 2012

85465316

DESIGN MARK

Serial Number

85465316

Status

REGISTERED

Word Mark

PHYLTH AMENDMENT CLOTHING

Standard Character Mark

No

Registration Number

4167719

Date Registered

2012/07/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

christopher p merten DBA phylth amendment clothing INDIVIDUAL UNITED STATES po box 551 murrieta CALIFORNIA 92564

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: A-shirts; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Baseball caps and hats; Beach shoes; Boat shoes; Button down shirts; Button-front aloha shirts; Camouflage pants; Camouflage shirts; Camp shirts; Canvas shoes; Capri pants; Cargo pants; Clothing for athletic use, namely, padded pants; Clothing for athletic use, namely, padded shirts; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Clothing shields, namely, pads applied to the underarms of shirts, blouses and sweaters; Collared shirts; Crop pants; Deck-shoes; Denims; Dress pants; Dress shirts; Hats; Hats for infants, babies, toddlers and children; Hooded sweat shirts; Infants' shoes and boots; Jeggings, namely, pants that are partially jeans and partially leggings; Jogging pants; Knit shirts; Long-sleeved shirts; Lounge pants; Night shirts; Open-necked shirts; Pants; Polo shirts; Sandals and beach shoes; Shirts; Shirts and short-sleeved shirts; Shirts and slips; Shirts for infants, babies,

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85465316

toddlers and children; Shirts for suits; Shoes; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Ski and snowboard shoes and parts thereof; Ski pants; Skiing shoes; Sleep pants; Sleep shirts; Small hats; Snap crotch shirts for infants and toddlers; Snow pants; Snowboard pants; Sport shirts; Sports caps and hats; Sports pants; Sports shirts; Sports shirts with short sleeves; Stretch pants; Sweat pants; Sweat shirts; T-shirts; Tee shirts; Turtle neck shirts; Wind pants; Wind shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Women's hats and hoods; Women's shoes; Women's shoes, namely, foldable flats; Woolly hats; Yoga pants; Yoga shirts. First Use: 2010/04/23. First Use In Commerce: 2010/04/23.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLOTHING" APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of black lettering "PHYLTH AMENDMENT CLOTHING" with black broken star logo.

Colors Claimed

Color is not claimed as a feature of the mark.

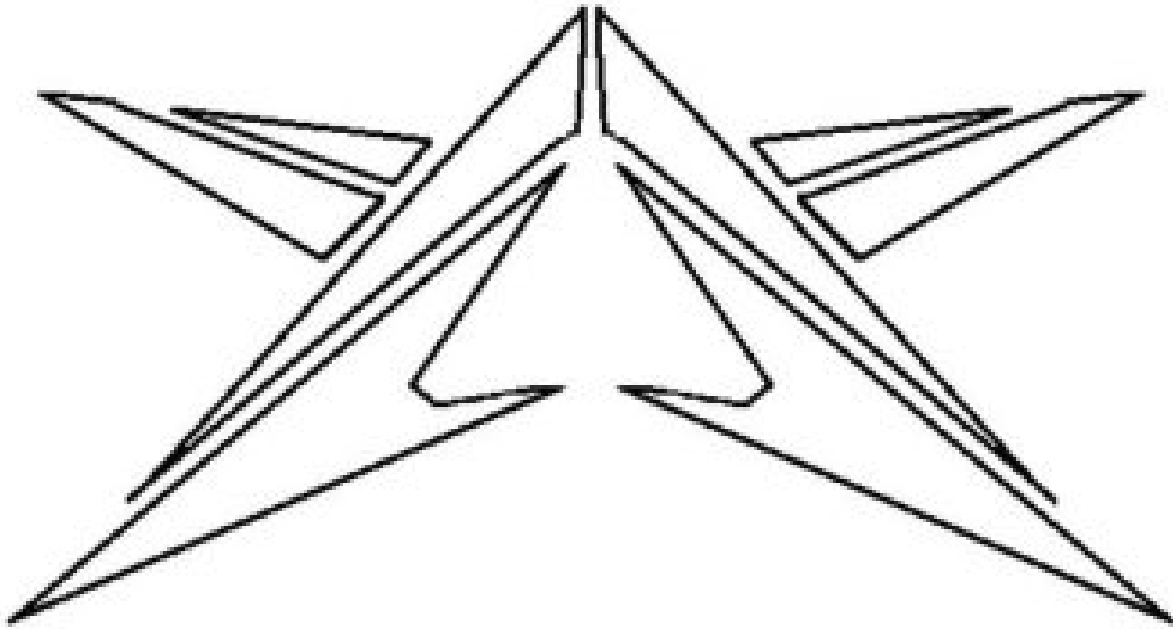
Filing Date

2011/11/05

Examining Attorney

FRYE, KIMBERLY

hynth



Amendment
clothing

EXHIBIT C

Print: Jul 31, 2012

85475905

DESIGN MARK

Serial Number

85475905

Status

REGISTERED

Word Mark

ORION & AT'EED

Standard Character Mark

Yes

Registration Number

4175175

Date Registered

2012/07/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

FANG YAN INDIVIDUAL CHINA C/O CPAPLACE PO BOX 93723 CITY OF INDUSTRY
CALIFORNIA 917153723

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shoes; Bathing suits; Belts; Blazers; Blouses; Boots; Bras; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Coats; Denim jackets; Denims; Dresses; Gloves; Hats; Infant wear; Jackets; Jeans; Nightgowns; Pants; Raincoats; Rainwear; Robes; Scarves; Shawls; Shirts; Shoes; Shorts; Ski wear; Slippers; Socks; Sports jackets; Stockings; Suits; Surf wear; Sweaters; Swim wear; T-shirts; Tank tops; Tights; Underwear; Vests. First Use: 2009/09/09. First Use In Commerce: 2009/09/09.

Translation Statement

"Orion" originated from Greek for "Son of Fire" and "At'eed"

EXHIBIT C

Print: Jul 31, 2012

85475905

originated from Navajo for "girl".

Filing Date

2011/11/17

Examining Attorney

ANKRAH, NAAKWAMA

Orion & At'eed

EXHIBIT C

To: Mary Kay McCauley (ruth.rivard@leonard.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85596694 - JILLY BEAN - 70128.1
Sent: 7/31/2012 4:46:50 PM
Sent As: ECOM112@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON **7/31/2012** FOR SERIAL NO. 85596694

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from **7/31/2012** (or sooner if specified in the office action).

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System [Response Form](#).

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.